UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)

TRIANTAFYLLOS TAFAS, **Plaintiff,** **v.** **JON W. DUDAS, in his official capacity as Under-Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, and the UNITED STATES PATENT AND TRADEMARK OFFICE,** **Defendants.**	**CIVIL ACTION: 1:07cv846 (JCC/TRJ) and Consolidated Case (below)**
SMITHKLINE BEECHAM CORPORATION, **Plaintiff,** **v.** **JON W. DUDAS, in his official capacity as Under-Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, and the UNITED STATES PATENT AND TRADEMARK OFFICE,** **Defendants.**	

PLAINTIFF TRIANTAFYLLOS TAFAS' SUPPLEMENTAL MEMORANDUM AND REPLY TO DEFENDANTS' MEMORANDUM IN OPPOSITION TO HIS MOTION FOR RECONSIDERATION

The Plaintiff, Dr. Triantafyllos Tafas ("Dr. Tafas"), by and through his undersigned attorneys, KELLEY DRYE & WARREN LLP, hereby respectfully submits this Supplemental Memorandum and Reply to Defendants' Memorandum of Law in Opposition to Dr. Tafas' Motion for Reconsideration, dated February 1, 2008 (Docket No. 260), of the Court's January 9, 2008 Memorandum Opinion, Tafas v. Dudas, 2008 WL 112043 (the "Decision").

In the Decision, the Court overruled Dr. Tafas' Objection to Magistrate Thomas Rawles Jones, Jr.'s written Order dated November 28, 2007, which granted Defendants' motion

Dockets.Justia.com

for a protective order and denied plaintiffs Dr. Tafas' and Smithkline Beecham Corporation's ("GSK") respective motions to compel production of a complete administrative record and a privilege log.

A. Defendants' Recent Supplementation of the Administrative Record Further Confirms That Dr. Tafas' Assertions of Incompleteness were Correct.

First, Dr. Tafas submits this supplemental memorandum to alert the Court that the USPTO filed supplements to the administrative record on January 18, 2008 (Docket No. 240)(the "First Amended Certification") and January 22, 2008 (Docket No. 248)(the "Second Amended Certification") enclosing additional documents that the USPTO now admits that it failed to include in the administrative record.

The USPTO recently filed a motion to strike any documents submitted by Dr. Tafas and various *amici* in support of Plaintiffs' summary judgment motions saying that nothing outside the record should be permitted. It is ironic that the USPTO has the temerity to file such a motion given that the USPTO is simultaneously admitting that it only found these newly produced and previously missing documents because they were brought to the USPTO's attention as part of the summary judgment briefing. (See McDowell Declarations dated January 18, 2008 and January 22, 2008 at ¶ 6 and ¶ 6, respectively)(Docket No. 240 and 248). There is no reason for the Court to continue to presume that the USPTO did not make other similar "mistakes" and "inadvertent" oversights in compiling the administrative record.

During the course of prior proceedings, the USPTO very aggressively took the position that all documents pertinent to the Proposed Rules and Dr. Tafas' Regulatory Flexibility Act (RFA) claim had been produced as part of the administrative record. The USPTO's assurances have been proven erroneous given that the USPTO has now admitted not only that it withheld documents related to the USPTO's initial RFA certifications that the new rules would not effect a substantial number of small entities ("IRFA"), but also actually withholding the USPTO's IRFA certification for the new claims rules. (See Ex. 1). Thus, the USPTO is now in the peculiar position of having to make an utterly untenable argument to the Court (i.e., that is that the Court should somehow continue to have confidence that the USPTO has produced all documents relating to the IRFA certification for the new claims rules **when the USPTO did not even produce and was seemingly unaware of the existence of the IRFA certification itself**).

The IRFA certification for the new claims rule withheld by the USPTO supports Dr. Tafas' repeated contention that the ESD requirement was never truly intended by the USPTO as a feasible alternative and/or safety valve for patent applicants desiring to file multiple claims exceeding the arbitrary numerical threshold imposed by the USPTO. The newly produced IRFA only further confirms the USPTO's intention to effect an arbitrary limit on the number of claims and the USPTO's recognition that the practical effect of the rules will be to deter many patent applicants from filing multiple claims simply to avoid the crushing financial burden imposed by the ESD requirement:

> The changes proposed in this notice will not have a significant impact upon small entities. The primary impact of this change would be to require applicants who submit an excessive number of claims to share the burden of examining the application by filing an examination support document covering the independent claims and the designated dependent claims.
>
> *　　*　　*　　*
>
> [I]n any event, any applicant may avoid the costs of such an examination support document simply by refraining from presenting more than ten independent claims in an application.

Ex. 1, SA 102-103 (Emphasis Added).

Again, and as Dr. Tafas previously argued before Magistrate Judge Jones, the Court need only look at the USPTO's own index to the administrative record to see that this newly produced IRFA certification (along with the IRFA certification for the new continuation rules that was previously provided by the USPTO) to see that these IRFA certifications really do arise “out of thin air” as Dr. Tafas has contended all along. In fact, there are only five (5) documents on the USPTO’s administrative record index that precede the previously produced IRFA for the continuations rule -- 4 of which documents predate the IRFA’s by 4 to 20 years and none of which seemingly could plausibly provide the factual underpinning for the continuations and claim rules’ IRFA’s. (See Exhibit 2).

B. Dr. Tafas’ Motion for Reconsideration Is Not Rendered Moot By Federal Rule of Civil Procedure 56(f).

Defendants’ argument that Dr. Tafas’ waived his right to continue to prosecute his motion for reconsideration of the Court’s decision affirming Magistrate Jones’ Ruling, which granted Defendants’ motion for an expedited summary judgment schedule and a protective order precluding Plaintiffs from being able to take any discovery at all, is unsupported, ignores the procedural status of the case and does not serve the purposes behind Rule 56(f).

In his opposition to Defendants’ protective order motion and in support of his motion to compel production of a complete administrative record, Dr. Tafas argued that summary judgment should be postponed for a brief period to allow certain necessary and important discovery. Thus, Dr. Tafas did not waive these arguments by not subsequently filing them repetitively in a Rule 56(f) affidavit -- particularly when they had already been considered and rejected by the Court. The USPTO’s assertion that such an exercise in redundancy should be required makes no sense, among other reasons, in light of the obvious fact that the appropriateness of the Court permitting summary judgment to proceed and its issuance of a blanket ban against discovery is the very thing, inter alia, that was *sub judice* with this Court when the parties filed their summary judgment motions in December 2007. It also remains sub judice in connection with the anticipated Court's decision on Dr. Tafas' pending motion for reconsideration.

Thus, it would merely be clogging the Court file with redundant papers for Dr. Tafas to now raise the exact same duplicative discovery arguments in a Rule 56(f) affidavit (i.e., to reargue that certain discovery is permissible and that summary judgment should be delayed). In fact, Dr. Tafas has little doubt that Defendants would have vehemently objected to any such Rule 56(f) affidavit had one been filed and presumably would have accused Dr. Tafas of seeking to improperly collaterally re-litigate something that had already been decided by the Court as part of the proceedings before Magistrate Judge Jones.

Since the Court has already ruled that no discovery at all is permissible, it would be superfluous and, quite frankly, a waste of everyone's time, effort and money for Plaintiffs to duplicatively catalog each and every separate disputed discovery item in a Rule 56(f) affidavit. The obvious purpose of a Rule 56(f) affidavit is so that a party is able to inform the Court that a motion for summary judgment is not ripe without some additional discovery being taken. More simply, the purpose is to inform the Court that one of the parties is claiming the need for some additional discovery in order to properly defend or prosecute a motion for summary judgment. Here, there is no need or purpose for a Rule 56(f) affidavit following immediately on the heels of the hotly contested discovery proceedings because the Court is already perfectly well aware of the disputed discovery items, as well as the fact that plaintiffs previously requested the Court to delay summary judgment for a limited amount of time sufficient to allow the requested discovery to be taken.

C. There Is No Special Heightened Standard for Reconsideration of a Court's decision on an FRCP Rule 72 Objection to A Magistrate Judge's Order.

Defendants have not presented any authority to support their insinuation that there is some type of super heightened standard that must be satisfied before a district court may properly reconsider its decision ruling on an FRCP Rule 72 Objection to a magistrate judge's order. (See Def. Opp. Mem. at pp. 6). There is none and the same legal standard and factors applicable to a motion for reconsideration applies to Dr. Tafas' present motion for reconsideration as it would in any other procedural context.

Here, Dr. Tafas' motion for reconsideration does not merely improperly regurgitate or rehash the exact same legal or factual arguments as Defendants' suggest. (See Def. Mem. at pp. 5-6). Instead, Dr. Tafas argued that the Court overlooked and/or misapprehended the USPTO's position, resulting in manifest errors in the Court's Decision. Dr. Tafas is using his motion for reconsideration for the entirely proper purpose of directing the Court's attention to these areas of misapprehension, as well as providing the Court an opportunity to correct any resulting errors of law before the case goes to the summary judgment stage. (See cases and discussion in Def. Mem. Opp. Mem. at pp. 5-6; see also Tafas Mem. of Law In Support of Motion for Reconsideration at pp. 6-7 (No. 245)(a court has broad and plenary power and discretion to reconsider its own orders, particularly if the court misapprehended the parties' positions or the applicable facts or law).

As set forth at length in Dr. Tafas' reconsideration papers, the Court misapprehended that Defendants were not withholding documents based on privilege (which admittedly they were). The Court also erred in permitting Defendants to withhold thousands of documents (reflecting years of the USPTO's internal communications and other internal records concerning the new rules) as "deliberative materials" -- even if they might not otherwise be subject to and meet all the myriad of requirements of the attorney-client, attorney work product, the qualified deliberative process privileges, or any other legally cognizable privileges. Dr. Tafas submits that this is not only contrary to the numerous cases requiring privilege assertions in the APA context to be substantiated through the production of a privilege log, but also runs squarely afoul of the general rule that all materials considered or reviewed by the USPTO, directly or indirectly, as part of its rule making must be produced in the administrative record filed with the Court.

Again, Dr. Tafas respectfully submits that the Court overlooked controlling law that government agencies are required to produce any and all materials considered directly or indirectly as part of the rule making as a mandatory disclosure in an APA case. (See Decision, 2008 WL 112043 at pp. 3). There is no exception to this rule except for a limited category of documents that are otherwise protected from disclosure as **privileged.** Along these lines, *deliberative materials* may only be withheld in an APA if they also meet all the requirements of the deliberative process privilege. In other words, there is no such thing as an irrelevancy category for deliberative materials, which is separate and distinct from the deliberative process privilege. Rather, the sole test of relevancy for purposes of compiling an administrative record for production in an APA case is all documents that were considered directly or indirectly by the agency rule makers. (Decision at p. 3). The produced record, which comprises the administrative record in front of the Court, is the compiled record minus privileged materials. Here, the Court's decision is clearly erroneous to the extent it accepts the USPTO's argument that it may utilize additional and different filters in addition to privilege (e.g., such as relevancy to excise so called deliberative materials) to redact documents from either its compiled record or the produced record. To the extent the USPTO wishes to assert a bona fide legally cognizable privilege for particular documents that would otherwise be part of the produced record, Dr. Tafas again submits that such assertions of privilege must be logged.

Amfac Resorts LLC v. U.S. Dept. of Interior, 143 F.Supp.2d 7 (D.D.C. 2001)("Amfac Resorts") does not help the USPTO nor is it inconsistent with Dr. Tafas' position. In Amfac Resorts, the court spoke approvingly of an agency's redaction of certain deliberative materials from the administrative record only because the court was seemingly of the impression that the documents were, in fact, privileged. (See discussion of Amfac Resorts in Def. Mem. In Opp. at pp. 11-12). The present case is distinguishable from Amfac Resorts because here the USPTO is seeking to withhold from its produced record thousands of documents it has never even located or reviewed in compiling its administrative record based entirely on a self-styled and non-existent purported relevancy exception for deliberative materials. This so called deliberative materials "relevancy" exception has been concocted by the USPTO out of whole cloth and is not based on valid assertions of legally cognizable privileges.

Similarly, Defendants' reliance on Ad Hoc Metals Coalition v. Whitman, 227 F.Supp.2d 134 (D.D.C. 2002) ("Ad Hoc Metals") for the proposition that deliberative materials do not belong in an administrative is also misplaced. First, there was no demand for and/or discussion of a privilege log in Ad Hoc Metals. Moreover, the Ad Hoc Metals court based its decision on Jordan v. United States Dept. of Justice, 591 F.2d 753, 772 (D.C.Cir.1978) ("Jordan"), in which case the court ruled that documents qualifying for the *deliberative process privilege* could be withheld by an administrative agency, but that the agency had the burden of substantiating the validity of the privilege if challenged. Id. at 772-774 and 779. The documents were not withheld based on relevance in Jordan and thus Ad Hoc Metals, which was spawned from Jordan, cannot reasonably be interpreted as recognizing such a proposition. In sum, there is nothing in Amfac Resorts, Ad Hoc Metals or Jordan affording a governmental agency the right to withhold deliberative materials based on *relevance* -- in the informal rule making context or otherwise -- as the USPTO has repeatedly suggested to the Court.

Defendants' assertion that Dr. Tafas' motion for reconsideration is "doomed" because he does not come "forward with "any" controlling authority holding that deliberative materials are properly part of an administrative record" is not only wrong, but puts the proverbial cart before the horse. Dr. Tafas' controlling legal authority is the myriad of cases he cited to the Court in the proceedings below (and which were adopted by this Court into its Decision) for the proposition **that all documents considered directly or indirectly by the agency must be produced** as part of the administrative record filed with the Court. (See Decision, 2008 WL 112043 at p. 3). These cases simply do not provide for any additional relevancy filters. In all events, it is the USPTO's burden -- not Dr. Tafas -- to establish some exception to the requirement that the USPTO must produce all documents it reviewed or considered in connection with its rule making. (See Def. Mem. In Opp. at pp. 10).

Of course, Dr. Tafas does not dispute the axiomatic proposition that documents genuinely meeting each and every requirement necessary to qualify for a legally recognized privilege (assuming no waiver of same) do not belong in the administrative record produced to the Court so long as that privilege is properly claimed and substantiated if challenged. What is disputed here, however, and what Dr. Tafas is seeking the right to verify through a privilege log and/or *en camera* review, is the validity of the USPTO's excisions from the produced administrative record based on assertions of privilege (and regardless of the USPTO's attempt to masquerade its claims of privilege as actually being claims of irrelevancy). This verification process is particularly important here in light of the USPTO's admission that thousands of documents, which no one has seemingly reviewed, are being withheld by the USPTO *en masse.*

Defendants' contention that Dr. Tafas is somehow required to prove that the administrative record is incomplete to obtain a privilege log concerning thousands of documents that the USPTO admits not providing (due to privilege or otherwise) is mixing apples and oranges. (See Def. Opp. Mem. at p. 13). Again, all documents and materials considered directly or indirectly by the USPTO as part of its rule making must be produced. Again, the case law provides for no exception to this rule other than for privileged documents (and, even in cases in which privilege logs are discussed (and cited by Dr. Tafas below) the courts generally required the agencies to substantiate any claims of privilege). (See Tafas Mem. In Support of Motion for Reconsideration at pp. 23-24)(No. 245).

Aware that they have no valid rebuttal arguments, Defendants also attempt to simply ignore Dr. Tafas' argument that Defendants would still not be excused from providing a privilege log for documents that are being withheld on the ground of *attorney-client* or *attorney-work product privileges* (as distinct from deliberative materials), which the USPTO itself admitted it was doing, even assuming arguendo the existence of some relevancy exception for deliberative materials. (See Tafas Mem. In Supp. of Reconsideration Motion at p. 13)(No. 245).

Finally, Defendants' characterization that Dr. Tafas is somehow arguing that there is a different standard for rule making procedures and adjudications is simply incorrect. Rather, Dr. Tafas merely asserts that for the purpose of administrative **adjudicative** proceedings or formal agency rulemakings that are akin to *quasi*-judicial proceedings (as distinguished from the informal USPTO rule making presently before the Court), that under Overton Park (which cites to U. S. v. Morgan II, which cites to U.S. v. Morgan I) the showing required to rebut a presumption that the administrative record was properly constituted is much higher, i.e., a "strong" showing of bad faith.

This case is not like the precedents cited by the USPTO in which courts appropriately sought to impose discovery limitations to prevent administrative law judges or their clerks from being subject to deposition and extensive discovery where there was already a transparent, complete and closed record similar to that generated in judicial proceeding. In other words, there was no legitimate need to invade the quasi-judicial officer's "chambers" to obtain the true record of proceedings or to determine the ALJ's stated reasons (which could be easily compared to the closed record).

Informal rule making is entirely different in that administrative record is compiled behind closed doors entirely outside the purview of the Court or the parties and essentially emerges from an agency "black box." Unlike a quasi-judicial formal administrative adjudicative or rule making proceeding, the entire informal rule making process (and not simply the final deliberations) occurs within the functional equivalent of "chambers." The parties are not present as the record unfolds in an informal rule making nor are there any of the standard type of documents reflecting or constituting the record of the type routinely generated as part of formal agency proceedings conducted on the record (e.g., hearing transcripts, exhibits, legal memoranda, etc.).

As such, limited and narrowly tailored discovery should be permissible in an APA case involving judicial review of an informal rulemaking. Such discovery is salutary to the extent it is reasonably calculated to insure that: the produced administrative record is complete; that it adequately reflects all documents and facts directly or indirectly considered by the agency as part of its rule making; and, sets forth the agencies' rationale and application of those factors so that the Court has an adequate basis to determine whether the rule making is arbitrary and capricious. Where, as here, there is strong *indicia* presented to the Court that the administrative record may be incomplete and/or that documents are being withheld as privileged which may not all be privileged, the policy reasons in the Morgan cases for requiring an exceptional showing of bad faith before discovery may be permitted simply do not apply and serve no useful purpose.

As to the balance of Defendants' arguments not specifically addressed above, they are already covered or otherwise addressed extensively in Dr. Tafas' memorandum of law in support of his motion for reconsideration. Thus, Dr. Tafas respectfully refers the Court to those papers in the interest of brevity.

CONCLUSION

WHEREFORE, for all the foregoing reasons, as well as those more particularly set forth in Dr. Tafas' Motion for Reconsideration and Supporting Memorandum of Law dated January 22, 2008, Dr. Tafas respectfully moves that his Motion for Reconsideration be granted, along with such other, further and different relief as the Court deems just, equitable and proper.

Dated: February 4, 2008

Respectfully submitted,

/s/ Joseph D. Wilson

Joseph D. Wilson (VSB # 43693)
Steven J. Moore, Esq. *(pro hac vice)*
James E. Nealon, Esq. *(pro hac vice)*
KELLEY DRYE & WARREN LLP
Washington Harbor, Suite 400
3050 K Street, NW
Washington, DC 20007
Telephone: (202) 342-8400
Facsimile: (202) 342-8451
E-mail: jwilson@kelleydrye.com
jnealon@kelleydrye.com
smoore@kelleydrye.com

Counsel for Plaintiff Triantafyllos Tafas

Of counsel:

William R. Golden Jr., Esq.
Delphine Knight Brown, Esq.
KELLEY DRYE & WARREN LLP
101 Park Avenue
New York, New York 10178-0002
Telephone: (212) 808-7992
Facsimile: (212) 808-7897
E-mail: wgolden@kelleydrye.com
dkbrown@kelleydrye.com

CERTIFICATE OF SERVICE

I hereby certify that on February 4, 2008 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

Elizabeth Marie Locke
Kirkland & Ellis LLP
655 15th Street, NW, Suite 1200
Washington, DC 20005
Email: elocke@kirkland.com

Craig Crandell Reilly
Richard McGettingan Reilly & West PC
1725 Duke Street, Suite 600
Alexandria, VA 22314
Email: craig.reilly@rmrwlaw.com

Daniel Sean Trainor
Kirkland & Ellis LLP
655 15th Street, NW, Suite 1200
Washington, DC 20005
Email: dtrainor@kirkland.com

Counsel for Plaintiffs SmithKline Beecham Corp. d/b/a GlaxoSmithKline, SmithKline Beecham PLC, and Glaxo Group Limited, d/b/a GlaxoSmithKline

Thomas J. O'Brien
Morgan, Lewis & Bockius
1111 Pennsylvania Avenue, NW
Washington, DC 20004
Email: to'brien@morganlewis.com

Counsel for Amicus American Intellectual Property Lawyers Association

Dawn-Marie Bey
Kilpatrick Stockton LLP
700 13th Street NW
Suite 800
Washington, DC 20005
Email: dbey@kslaw.com

Counsel for Amicus Hexas, LLC, The Roskamp Institute, Tikvah Therapeutics, Inc.

James Murphy Dowd
Wilmer Cutler Pickering Hale & Dorr LLP
1455 Pennsylvania Avenue NW
Washington, DC 20004
Email: james.dowd@wilmerhale.com

Counsel for Amicus Pharmaceutical Research and Manufacturers of America

Randall Karl Miller
Arnold & Porter LLP
1600 Tysons Blvd, Suite 900
McLean, VA 22102
Email: randall_miller@aporter.com

Counsel for Amici Biotechnology Industry Organization and Monsanto Company

Rebecca M. Carr
Pillsbury Winthrop Shaw Pittman, LLP
2300 N Street, NW
Washington, DC 20037
Email: Rebecca.carr@pillsburylaw.com

Scott J. Pivnick
Pillsbury Winthrop Shaw Pittman
1650 Tysons Boulevard
McLean, Virginia 22102-4856
Email: Scott.pivnick@pillsburylaw.com

Counsel for Amicus Elan Pharmaceuticals, Inc.

Robert Christian Bertin
Swidler Berlin LLP
3000 K Street, NW, Suite 300
Washington, DC 20007
Tel: (202) 373-6672
Email: r.bertin@bingham.com

Counsel for Amicus Bar Association of the District of Columbia

Robert C. Gill
Saul Ewing LLP
2600 Virginia Avenue, NW, Suite 1000
Washington, DC 20037
Tel: (202) 295-6605
Fax: (202) 295-6705
Email: rgill@saul.com

Counsel for Amici BioAdvance, Life Sciences Greenhouse of Central Pennsylvania, and Pittsburgh Life Sciences Greenhouse

Matthew Schruers
Computer & Communications
Industry Association
900 17th Street, NW, Suite 1100
Washington, DC 20006
Tel.: (202) 783-0070
Fax: (202) 783-0534
Email: mschruers@ccianet.org

Counsel for Amici Public Patent Foundation, Computer & Communications Industry Association, AARP, Consumer Federation of America, Essential Action, Foundation for Taxpayer and Consumer Rights, Initiative for Medicines, Access & Knowledge, Knowledge Ecology International, Prescription Access Litigation, Public Knowledge, Public Patent Foundation, Research on Innovation, and Software Freedom Law Center

Kenneth Carrington Bass, III
Sterne, Kessler, Goldstein & Fox
1100 New York Avenue, NW, Suite 600
Washington, DC 20005
Tel: (202) 722-8825
Fax: (202) 371-2540
Email: kbass@skgf.com

Mark Fox Evens
Thelen, Reid & Priest, LLP
701 Eighth Street, NW, Fifth Floor
Washington, DC 20001-3721
Tel: (202) 722-8888
Email: mevens@skgf.com
Counsel for Amici AmberWave Systems

Robert E. Scully Jr.
Stites & Harbison PLLC
1199 North Fairfax Street, Suite 900
Alexandria, Virginia 22314
(703) 739-4900
Fax: (703) 739-9577
Email: rscully@stites.com

Counsel for Amicus Human Genome Sciences, Inc.

Charles Gorenstein
Birch, Stewart, Kolasch and Birch, LLP
8110 Gatehouse Rd., Suite 100 East
Falls Church, Virginia 22042
Email: cg@bskb.com

Counsel for Amicus Intellectual Property Institute of the William Mitchell College of Law

Lauren A. Wetzler
Assistant United States Attorney
Justin W. Williams U.S. Attorney's Building
2100 Jamieson Avenue
Alexandria, Virginia 22134
Tel: (703) 299-3752
Fax: (703) 299-3983
Email: Lauren.Wetzler@usdoj.gov

Counsel for All Defendants

Jonathan Dyste Link
Townsend and Townsend and Crew LLP
1301 K Street, NW, 9th Floor – East Tower
Washington, DC 20005
Tel: (202) 481-9900
Fax: (202) 481-3972
Email: jlink@townsend.com

Counsel for Amicus CFPH, LLC

Blair Elizabeth Taylor
Covington & Burling
1201 Pennsylvania Avenue, NW
Washington, DC 20004
Tel: (202) 662-5669
Fax: (202) 778-5669
Email: btaylor@cov.com

Corporation, Fallbrook Technologies, Inc., InterDigital Communications LLC, Nano-Terra Inc., and Tessera, Inc.

Kevin Michael Henry
Sidley Austin Brown & Wood LLP
1501 K Street, NW
Washington, DC 20005
Tel: (202) 736-8000
Email: khenry@sidley.com

Counsel for Amicus Washington Legal Foundation

John C. Maginnis, III
1350 Connecticut Avenue, NW, Suite 301
Washington, DC 20036
Tel: (202) 659-4420
Email: maginnislaw2@verizon.net

Counsel for Amicus CropLife America

Jackson David Toof
Robins, Kaplan Miller & Ciresi LLP
1875 Eye Street, NW, Suite 300
Washington, DC 20006
Tel: (202) 857-6130
Fax: (202) 223-8604
Email: toof.jackson@arentfox.com

Counsel for Amici Anchor Wall Systems, Inc., Donaldson Company, Inc., Ecolab, Inc., General Mills, Inc., and Valspar Corporation

Timothy A. Molino
Bingham McCutchen LLP
2020 K Street, NW
Washington, DC 2006
Tel: (202) 373-6161
Fax: (202) 373-6001
Email: timothy.molino@bingham.com

Counsel for Amicus Federation Internationale Des Conseils En Proprit Industrielle

Counsel for Amicus Intellectual Property Owners Association

Craig James Franco
Odin Feldman & Pittleman PC
9302 Lee Highway, Suite 1100
Fairfax, VA 22031
Tel: (703) 218-2100
Email: craig.franco@ofplaw.com

Counsel for Amici Norseman Group, LLC and Polestar Capital Associates, LLC

David Wayne Long
Howrey Simon Arnold & White LLP
1299 Pennsylvania Avenue, NW
Washington, DC 20004
Tel: (202) 783-0800
Email: longd@howrey.com

Counsel for Amicus Teles AG Informationstechnologien

Maurice Francis Mullins
Spotts Fain PC
411 E Franklin Street, Suite 600
PO Box 1555
Richmond, VA 23218
Tel: (804) 697-2069
Fax: (804) 697-2169
Email: cmullins@spottsfain.com

Counsel for Amici Intel Corporation and Micron Technology, Inc.

I have also caused copies of the foregoing, with attachments, to be sent to the following non-ECF users by first-class mail (where an address has been proved to the Court) or electronic mail (where it has not been):

Ron D. Katnelson
Encinatas, CA
rkatznelson@roadrunner.com

Amicus curiae Pro Se

Robert Lelkes
Geigenbergerstr.3
81477 Munich
Germany

Amicus Curiae Pro Se

Jennifer Sue Martinez
Stanford Law School
599 Nathan Abbott Way
Stanford, CA 94305
Tel: (650) 725-2749

Counsel for Amicus Intellectual Property and Administrative Law and Public Health Professors

___/s/ Joseph D. Wilson__________
Joseph D. Wilson (VSB # 43693)
KELLEY DRYE & WARREN LLP
Washington Harbor, Suite 400
3050 K Street, NW
Washington, DC 20007
Telephone: (202) 342-8400
Facsimile: (202) 342-8451
E-mail: jbaden-mayer@kelleydrye.com

Counsel for Plaintiff Triantafyllos Tafas